

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

NADIA WINSTON

VS.

WAL-MART, ET AL

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§

CIVIL ACTION NO.

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Wal-Mart Stores Texas, LLC and Angelica Garcia (incorrectly sued as Wal-Mart and Angel) (collectively referred to as “Walmart”) file this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1331.

I. INTRODUCTION

1. Walmart seeks to consolidate two identical cases from state court into one federal court case pursuant to U.S.C. § 1441, *et seq.*

2. Plaintiff initially filed suit in the County Court at Law No. 4, Collin County, Texas under Cause No. 004-00362-2024 in a matter styled *Nadia Winston vs. Wal-Mart, et al.* (herein referred to as the “County Court Action”). Plaintiff filed a second action in the 493rd District Court, Collin County, Texas, under Cause No. 493-00640-2024 in a matter styled *Nadia Winston vs. Wal-Mart, et al.* (herein referred to as the “District Court Action”). The County Court Action and the District Court Action are referred to as (the “State Court Action”). The County Court Action and the District Court Action are virtually identical except for the calculation of damages.

II. NATURE OF THE SUIT

3. Plaintiff Nadia Winston alleges Angel (a manager at Walmart) requested her children not ride the electric carts. When Plaintiff came into the store, she and Angel had a

disagreement. The police subsequently issued a trespass notice to Plaintiff. *See* Plaintiff's Complaint in the District Court Action at 4; Plaintiff's Complaint in the County Court Action at 4.

4. Plaintiff brought this lawsuit against Walmart in the County Court at Law No. 4, Collin County, Texas. *See* Plaintiff's Complaint in the County Court Action at 1. Plaintiff brought this lawsuit against Walmart in the 493rd District Court, Collin County, Texas. *See* Plaintiff's Complaint in the District Court Action at 1.

III. TIMELINESS OF REMOVAL

5. Plaintiff commenced this lawsuit by filing her "Complaint for a Civil Action" in the County Court Action on January 25, 2024. Plaintiff filed a virtually identical "Complaint for a Civil Case" in the 493rd District Court, Collin County, Texas on February 2, 2024 with different damages.

6. Angelica Garcia accepted service on February 2, 2024 in the County Court Action through Constable and accepted service on February 5, 2024 in the District Court Action through Constable. Plaintiff appears to have served Walmart by serving Ms. Garcia. This removal is timely because it is filed less than 30 days after Ms. Garcia was served. 28 U.S.C. § 1446.

IV. BASIS FOR REMOVAL JURISDICTION

7. Removal is proper under 28 U.S.C. §§ 1441 and 1331 because Plaintiff alleged a federal question by alleging a violation of the Americans with Disabilities Act and 14th amendment. *See* Plaintiff's Complaint in the County Court Action at 3; Plaintiff's Complaint in the District Court Action at 3. Plaintiff used a federal court fill in the blank Complaint and specifically marked the box for federal question as the basis for federal court jurisdiction. *Id.*

V. THIS NOTICE IS PROCEDURALLY CORRECT

8. This action may be removed to this Court pursuant to 28 U.S.C. § 1441(b), because Plaintiff is alleging a federal question by alleging violations of the Americans with Disabilities Act and the 14th amendment. This action is removable to this Court and venue is proper because this United States District Court and the Eastern Division embraces the place where the State Court Action was pending. 28 U.S.C. §§ 124(a)(1), 1441(a).

9. Walmart has attached to this Notice of Removal the documents required by 28 U.S.C. § 1446(a) and Local Rule 81.1 as follows:

- A: Index of all documents filed in the County Court Action.
- B: Docket Sheet in the County Court Action.
- C: Copies of all process, pleadings and orders filed in County Court Action.
- D: Index of all documents filed in the District Court Action.
- E: Docket Sheet in the District Court Action.
- F: Copies of all process, pleadings and orders filed in District Court Action.
- G. State Court and Party Information.
- H: Signed Certificate of Interested Persons.

10. Walmart is filing with the Notice of Removal a separate Certificate of Interested Persons.

11. Walmart retains the right to supplement the jurisdictional allegations by affidavit, declaration, or otherwise should Plaintiff challenge the allegations in a motion to remand or other filing.

12. In accordance with 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be given to all parties and to the Clerk of the County Court at Law No. 4, Collin County, Texas and the 493rd District Court, Collin County, Texas.

13. Plaintiff has not demanded a jury trial in the State Court Action. Defendants have demanded a jury trial in the State Action.

14. Trial has not commenced in the County Court at Law No. 4, Collin County, Texas nor the 493rd District Court, Collin County, Texas.

V. CONCLUSION

15. Since Plaintiff is alleging violations of federal law, Defendants desire and are entitled to remove the lawsuit filed in the County Court at Law No. 4, Collin County, Texas nor the 493rd District Court, Collin County, Texas to the United States District Court for the Eastern District of Texas, Sherman Division.

WHEREFORE, PREMISES CONSIDERED, Defendants Wal-Mart Stores Texas, LLC and Angelica Garcia, pursuant to and in conformance with the statutory requirements, removes this action from the County Court at Law No. 4, Collin County, Texas and the 493rd District Court, Collin County, Texas, to this Court.

Respectfully submitted,

By: /s/ Stacy Hoffman Bruce

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify a true and correct copy of this document has been forwarded to the following counsel for Plaintiff either by e-service, telefax, electronic mail, and/or regular U.S. mail on this 1st day of March, 2024.

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/s/ Stacy Hoffman Bruce

STACY HOFFMAN BRUCE